

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED SPECIALTY INSURANCE  
COMPANY, a Delaware corporation,

Plaintiff,

v.

SHOT SHAKERS, INC. d/b/a Roosevelt Ale  
House, a Washington corporation, SCOTT  
SIMPSON, a Washington resident, MICHELLE  
SIMPSON, a Washington resident, and  
JACKMAN COMMERCIAL BUILDING  
L.L.C., a Washington limited liability company,

Defendants.

NO. 2:18-cv-00596-JLR

**STIPULATED PROTECTIVE ORDER**

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER - 1  
NO. 2:18-cv-00596-JLR

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

6609444.1

**EXHIBIT A**

1    2.    **"CONFIDENTIAL" MATERIAL**

2        "Confidential" material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

- 4            • United Specialty Insurance Company's Claim Department Operating  
5 Guidelines; and
- 6            • Previously redacted underwriting documents containing premium calculation  
7 information (USIC 951; 1004; 1079; 1146; 1201; 1392; 1595; and 1803).

8    3.    **SCOPE**

9        The protections conferred by this agreement cover not only confidential material (as  
10 defined above), but also (1) any information copied or extracted from confidential material; (2)  
11 all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
12 testimony, conversations, or presentations by parties or their counsel that might reveal  
13 confidential material.

14        However, the protections conferred by this agreement do not cover information that is  
15 in the public domain or becomes part of the public domain through trial or otherwise.

16    4.    **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

17        4.1    Basic Principles. A receiving party may use confidential material that is  
18 disclosed or produced by another party or by a non-party in connection with this case only for  
19 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
20 disclosed only to the categories of persons and under the conditions described in this  
21 agreement. Confidential material must be stored and maintained by a receiving party at a  
22 location and in a secure manner that ensures that access is limited to the persons authorized  
23 under this agreement.

1           4.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material only to:

4                   (a)    the receiving party's counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the information for this  
6 litigation;

7                   (b)    the officers, directors, and employees (including in house counsel) of the  
8 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
9 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
10 designated;

11                   (c)    experts and consultants to whom disclosure is reasonably necessary for  
12 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
13 (Exhibit A);

14                   (d)    the court, court personnel, and court reporters and their staff;

15                   (e)    copy or imaging services retained by counsel to assist in the duplication  
16 of confidential material, provided that counsel for the party retaining the copy or imaging  
17 service instructs the service not to disclose any confidential material to third parties and to  
18 immediately return all originals and copies of any confidential material;

19                   (f)    during their depositions, witnesses in the action to whom disclosure is  
20 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
21 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
22 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
23 material must be separately bound by the court reporter and may not be disclosed to anyone  
24 except as permitted under this agreement; and  
25

1 (g) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
4 referencing such material in court filings, the filing party shall confer with the designating  
5 party to determine whether the designating party will remove the confidential designation,  
6 whether the document can be redacted, or whether a motion to seal or stipulation and proposed  
7 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
8 the standards that will be applied when a party seeks permission from the court to file material  
9 under seal.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
12 party or non-party that designates information or items for protection under this agreement  
13 must take care to limit any such designation to specific material that qualifies under the  
14 appropriate standards. The designating party must designate for protection only those parts of  
15 material, documents, items, or oral or written communications that qualify, so that other  
16 portions of the material, documents, items, or communications for which protection is not  
17 warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
20 unnecessarily encumber or delay the case development process or to impose unnecessary  
21 expenses and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it designated  
23 for protection do not qualify for protection, the designating party must promptly notify all other  
24 parties that it is withdrawing the mistaken designation.

1           5.2   Manner and Timing of Designations. Except as otherwise provided in this  
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
3 ordered, disclosure or discovery material that qualifies for protection under this agreement  
4 must be clearly so designated before or when the material is disclosed or produced.

5           (a)   Information in documentary form: (*e.g.*, paper or electronic documents  
6 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
7 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
8 contains confidential material. If only a portion or portions of the material on a page qualifies  
9 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
10 making appropriate markings in the margins).

11           (b)   Testimony given in deposition or in other pretrial proceedings: the  
12 parties and any participating non-parties must identify on the record, during the deposition or  
13 other pretrial proceeding, all protected testimony, without prejudice to their right to so  
14 designate other testimony after reviewing the transcript. Any party or non-party may, within  
15 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
16 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party  
17 desires to protect confidential information at trial, the issue should be addressed during the pre-  
18 trial conference.

19           (c)   Other tangible items: the producing party must affix in a prominent  
20 place on the exterior of the container or containers in which the information or item is stored  
21 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
22 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

23           5.3   Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the designating party's  
25 right to secure protection under this agreement for such material. Upon timely correction of a

1 designation, the receiving party must make reasonable efforts to ensure that the material is  
2 treated in accordance with the provisions of this agreement.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4       6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

10       6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
11 regarding confidential designations without court involvement. Any motion regarding  
12 confidential designations or for a protective order must include a certification, in the motion or  
13 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
14 conference with other affected parties in an effort to resolve the dispute without court action.  
15 The certification must list the date, manner, and participants to the conference. A good faith  
16 effort to confer requires a face-to-face meeting or a telephone conference.

17       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
18 intervention, the designating party may file and serve a motion to retain confidentiality under  
19 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
21 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and  
22 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
23 continue to maintain the material in question as confidential until the court rules on the  
24 challenge.

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
2 **OTHER LITIGATION**

3 If a party is served with a subpoena or a court order issued in other litigation that  
4 compels disclosure of any information or items designated in this action as  
5 "CONFIDENTIAL," that party must:

6 (a) promptly notify the designating party in writing and include a copy of  
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is  
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued  
12 by the designating party whose confidential material may be affected.

13 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
15 confidential material to any person or in any circumstance not authorized under this agreement,  
16 the receiving party must immediately (a) notify in writing the designating party of the  
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
18 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
19 made of all the terms of this agreement, and (d) request that such person or persons execute the  
20 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
22 **PROTECTED MATERIAL**

23 When a producing party gives notice to receiving parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the  
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This

1 provision is not intended to modify whatever procedure may be established in an e-discovery  
2 order or agreement that provides for production without prior privilege review. The parties  
3 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

4 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

5 Within 60 days after the termination of this action, including all appeals, each receiving  
6 party must return all confidential material to the producing party, including all copies, extracts  
7 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
8 destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
12 work product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a  
14 designating party agrees otherwise in writing or a court orders otherwise.

15  
16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

17  
18 WILLIAMS, KASTNER & GIBBS, LLC

FOSTER PEPPER PLLC

19 s/ Eliot M. Harris

s/ Jason R. Donovan

20 Eliot M. Harris, WSBA #36590

Jason R. Donovan, WSBA #40994

21 Email: [eharris@williamskastner.com](mailto:eharris@williamskastner.com)

Email: [j.donovan@foster.com](mailto:j.donovan@foster.com)

22 *Attorneys for Plaintiff*

*Attorneys for Defendants*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7 DATED: 20 September 2018

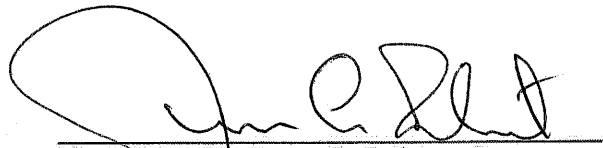
8   
9  
10 The Honorable James L. Robart  
11 United States District Court Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty  
of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Western District of Washington on [date]  
in the case of United Specialty Insurance Company v. Shot Shakers, Inc., et al., No. 18-0596JLR  
~~\_\_\_\_\_ [insert formal name of the case and the number and~~  
~~initials assigned to it by the court]~~. I agree to comply with and to be bound by all the terms of  
this Stipulated Protective Order and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
that I will not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the provisions of this  
Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

STIPULATED PROTECTIVE ORDER - 10  
NO. 2:18-cv-00596-JLR

6609444.1

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600